

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE WORLD TRADE CENTER LOWER
MANHATTAN DISASTER SITE LITIGATION

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 11/8/11

**ORDER DIRECTING SPECIAL
MASTERS NOT TO PROCEED
WITH IRREGULARLY
SWORN CASES**

21 MC 102 (AKH)

X
ALVIN K. HELLERSTEIN, U.S.D.J.:

WHEREAS in my September 28, 2011 Order Enlarging Time To Submit Sworn Answers to court-ordered interrogatories, I ordered that properly drawn declarations in the form provided by 28 U.S.C. § 1746 would be accepted, and that affidavits sworn to before a notary public would not be required; and

WHEREAS, in response to plaintiffs' counsel's inquiry, at a status conference of October 18, 2011, I stated to plaintiffs' counsel, "Let me be clear on this. . . . There are two ways to swear in federal procedure: one is to take an oath before a person qualified to administer an oath; the second is to use a form of declaration provided in Title 28. Those are the only two ways."; and

WHEREAS Title 28 U.S.C. § 1746, Unsworn Declarations Under Penalty Of Perjury, provides:

Wherever . . . any matter is required . . . to be supported . . . by the sworn declaration . . . in writing of the person making the same . . . , such matter may, with like force and effect, be supported . . . by the unsworn declaration . . . in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form: . . . "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.";

WHEREAS the Special Masters recently obtained example copies of declarations in different and non-complying form, to wit: "I verify that the foregoing responses are true and correct to my knowledge. I am aware that if any of the foregoing responses are willfully false, I

am subject to punishment," dated prior to my order of September 28, 2011, and said form is not the substantial equivalent of the form of declaration provided by 28 U.S.C. § 1746; and

WHEREAS, by order of October 5, 2011, the Special Masters were to select 150 cases, from the approximately 1500 cases pending in this docket, for further selection by the parties and the Court of 45 cases for intensive discovery, motions, and trial; therefore

IT IS ORDERED that the Special Masters shall not select, for the November 14, 2011 selection, any case where the answer to the court-ordered interrogatory is not properly sworn to under oath conforming to Rule 33(b)(1), (3), (5), Fed. R. Civ. P.; or properly declared under penalty of perjury conforming to 28 U.S.C. § 1746; and

IT IS ORDERED that the plaintiffs so affected, either because their interrogatory answers are not sworn to nor properly declared at all (approximately 178 cases), or because they are certified by improper declaration (approximately 1155 cases), shall show cause, by 4:00 p.m., November 18, 2011, why their cases should not be dismissed pursuant to Rule 41(b) (Fed. R. Civ. P.) for failure to prosecute, and/or otherwise be sanctioned.

SO ORDERED

Dated: November 8, 2011
New York, New York



ALVIN K. HELLERSTEIN
United States District Judge